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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 435

BOWMAN DAIRY COMPANY, ET AL.,
Petitioners,

vs.

UNITED STATES OF AMERICA AND
WILLIS L. HOTCHKISS.
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR THE PETITIONERS.

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REPLY BRIEF FOR THE PETITIONERS.

Part I of this reply brief will deal with those matters presented in the Introduction and in Part I of the Government's brief which are not discussed in petitioners' principal brief. Similarly, Part II herein is directed to contentions advanced in Part II of the Government's brief. Throughout this reply brief, the sequence of the Government's brief is adopted.

I.

Petitioners have advanced the contention that Rules 16 and 17(c) have separate and distinct functions, as well as differing purposes and effects. They have contended that the general rights of discovery afforded by Rule 16 exist throughout the course of the proceeding after the return of an indictment or information and are qualified only by the necessity that discovery thereunder be material to the preparation of a defense and that the request be reasonable (Petitioners' Br. 34 and note 21). On the other hand, petitioners contend that the limited discovery allowed under Rule 17(c) must have a definite but flexible relationship to trial, depending upon the complexity of the particular case. This theory is described by the Government as "ingenious" (Br. 13).

Broadly, the Government's theory is that the rights of inspection specifically set forth in Rule 17(c) are merely to test "proffered evidence for authenticity and to determine whether to object to its introduction" (Br. 34). If that be the basis for the inspection allowed under Rule 17(c), why the discretionary provision in the last sentence of the Rule that the court "*may*, upon their production, permit the books, papers, documents or objects, or portions thereof, to be inspected by the parties and their attorneys"? (Italics supplied.) Certainly, even without benefit of the Rule, if the "books, papers, documents or objects" are to be offered in evidence, the adversary may have reasonable inspection. This is as "traditional" as the subpoena itself. There must be an additional reason for the discretion set forth in the above quotation from Rule 17(c).

Petitioners conclude that the reason discretion is specifically given in Rule 17(c) for pre-trial inspection is for the purpose of eliminating possible surprise and resulting delay during trial, and to achieve a limited discovery com-

mensurate with fairness so that a party may have an opportunity to adduce evidence in avoidance or rebuttal.[1] Such a ruling in a criminal proceeding is stigmatized by the Government with the appellation "discovery". It might well be described as "enlightened judicial thinking", in line with the purposes of the Federal Rules of Criminal Procedure as set forth in Rule 2. We submit that the "ingenious" theory of the petitioners thus suddenly becomes ingenuous.

The Government contends that neither the prior federal practice nor the overwhelming weight of state authority recognized any broad right of discovery in criminal cases under the common law (Br. 21). But of the 46 cases (40 of which are appellate court cases) cited by the Government in Notes 10,[2] 11,[3] and 12 (Br. 20-22), only four reverse a trial court's order for pre-trial inspection, namely *State* v. *Jeffries*, 117 Kan. 742 (1925);[4] *State* ex rel. *Robertson*

[1] Note Judge Yankwich's remarks quoted on p. 25 of petitioners' principal brief.

[2] With reference to confession cases, the Government cites *State* v. *Dorsey*, 207 La. 928 (1945); *State* v. *Haas*, 188 Md. 63 (1947); and *State* v. *Cala* (Ohio App.), 35 N. E. 2d 758 (1940), as *contra* to its position. Additional cases granting pre-trial inspection of confessions are *State* v. *Burris*, 198 Ia. 1156 (1924); *People* v. *Rogas*, 158 N. Y. Misc. 567 (1936); *People* v. *Kresel*, 142 N. Y. Misc. 88 (1931); and *Jenkins* v. *State*, 45 Tex. Cr. R. 173 (1903); see also *Jones* v. *State*, 213 Ark. 863 (1948); *Cramer* v. *State*, 145 Neb. 88 (1944); and *State* v. *Clark*, 21 Wash. 2d 774 (1944).

[3] In addition to *Daly* v. *Dimock*, 55 Conn. 579 (1887); *People* v. *Miller*, 257 N. Y. 54 (1931); and *Mohler* v. *Commonwealth*, 132 Va. 713 (1922), which the Government recognizes as allowing inspection of grand jury minutes and similar records, the following cases likewise permitted such inspection: *State* v. *Burris*, 198 Ia. 1156 (1924); *State* v. *Hinkley*, 81 Kan. 838 (1910); *People* v. *Kresel*, 142 N. Y. Misc. 88 (1931); *Jenkins* v. *State*, 45 Tex. Cr. R. 173 (1903), see also *Matter of Attorney General of the United States*, 160 N. Y. Misc. 533 (1936); *State* v. *Morrison*, 175 Wash. 656 (1933).

[4] But cf. *State* v. *Hinkley*, 81 Kan. 838, 846-849 (1910).

v. *Steele*, 117 Minn. 384 (1912); *State* v. *Terte*, 324 Mo. 925 (1930); and *State* v. *Yeoman*, 112 Ohio St. 214 (1925).[5] Moreover, only in the *Terte* case was the reversal based on the ground that scope of inspection was too broad, and there the decision was based on a strict interpretation of the language of the applicable statute (but cf. *State* v. *Naething*, 318 Mo. 531, 539-540 (1927)). In this connection, it is pertinent to note that the common law cases were, as a rule, concerned with simple matters, and that the scope of the request for, and the granting of, pre-trial inspection were limited by the very nature of the ordinary common law case. (See remarks of Professor Dession, Petitioners' Br. 27.)

In discussing the history of Rule 16 of the Federal Rules of Criminal Procedure, the Government relies (Br. 23, note 14) on the following statement in the notes to the Preliminary and Second Preliminary Draft of that Rule:

> "Inspection has frequently been denied where the motion was regarded as a 'fishing expedition' or an attempt to force the government to disclose its case."[6]

This statement was excised from the final note to Rule 16, probably because the intervening decisions of this Court in *Hickman* v. *Taylor*, 329 U. S. 495, buried any "fishing expedition" objections.

In discussing Rule 16, the Government quotes (Br. 24-25, note 15) from Judge Learned Hand's opinion in *United States* v. *Garsson*, 291 Fed. 646, 649 (S. D. N. Y., 1923). However, that opinion was concerned with the inspection of grand jury minutes—a question not involved here. The

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[5] But cf. *State* v. *Cala*, 35 N. E. 2d 758, 760-761 (Ohio Ct. of Apps., 1940).

[6] Federal Rules of Criminal Procedure, Preliminary Draft (1943), p. 103; Federal Rules of Criminal Procedure, Second Preliminary Draft (1944), p. 95.

Garsson opinion reflected the common law policy of maintaining the secrecy of grand jury proceedings, but Rule 6(e) of the Criminal Rules permits the disclosure of matters occurring before the grand jury in certain circumstances. Moreover, Judge Hand's views on the rights of an accused have been modified since 1923. Cf. *United States* v. *Coplon*, 185 F. 2d 629 (C. A. 2); *United States* v. *Andolschek*, 142 F. 2d 503 (C. A. 2); *United States* v. *Grayson*, 166 F. 2d 863 (C. A. 2).

The Government shows that the second preliminary draft of Rule 16 was limited to documents "constituting evidence in the proceeding" (Br. 25) but does not explain that this language was removed from the final draft of Rule 16, thereby indicating that the draftsmen of the Criminal Rules rejected the evidentiary test as unsatisfactory. Although thus aware of the evidentiary test, it should be noted that the draftsmen of the Criminal Rules never saw fit to write it into Rule 17(c). Nor was the evidentiary test followed in the *American Tobacco* case (see note 7, *infra*), and Rule 17(c) was patterned on that case (see Petitioners' Br. 28).

II.

The Government urges that "Under petitioners' sweeping interpretation of the subpoena privilege, there are no limits upon the power of a court to order pre-trial production of documents under Rule 17(c)" (Br. 30). Petitioners have made no such contention, but have, instead, pointed out that Rule 17(c) contains its own limitations (Br. 28-29). A district court's inspection order under Rule 17(c) could, of course, be reviewed for abuse of discretion, but, as noted by Judge Lindley (R. 139), the Government has never contended that the district court abused its discretion.

The Government again urges that the limitations of

Rule 16 must be read into Rule 17(c) because of the *ejusdem generis* rule (Br. 30). Rules 16 and 17(c) have separate and distinct functions (Petitioners' Br. 29-36), so that the *ejusdem generis* rule is inapplicable for that reason, as well as for the other reasons presented in petitioners' principal brief (at pp. 17-18). Judge Lindley's refusal to read the limitations of Rule 16 into Rule 17(c) (R. 139) is especially persuasive because he was Panel Chairman of the American Bar Association's Institute (August 24, 1943) considering Rule 17(c).

In attempting to support its argument that the limitations of Rule 16 must be read into Rule 17(c), the Government states (Br. 31) that "Since one of those limits [in Rule 16] is that pre-trial discovery is only available in favor of defendants, it follows that pre-trial discovery against defendants is not permitted under Rule 17(c)." Such a tortuous construction is not only inconsistent with the plain language of Rule 17(c) and its history, but the Government itself has employed Rule 17(c) for discovery purposes against one of the corporate petitioners herein (Petitioners' Br. 44, note 26), and even before the Criminal Rules were promulgated, employed pre-trial subpoenas *duces tecum* for discovery purposes (Petitioners' Br. 28). In fact, one of the draftsmen of the Criminal Rules explained that Rule 17(c) "sanctioned" the use of pre-trial discovery subpoenas *duces tecum* by the Government (Petitioners' Br. 28).

Because Rule 16 applies only to discovery against the Government, reading its limitations into Rule 17(c), as advocated here by the Government, would mean that all documents in the Government's possession, unless "obtained from or belonging to the defendant or obtained from others by seizure or by process" (Rule 16), would be privileged documents which an accused could never inspect before trial. Such a result is not in accord with

the language of Rule 17(c) and would discriminate between subpoenas addressed to the prosecutor and subpoenas addressed to others (Petitioners' Br. 44-45).

Although the Government attempts to distinguish *American Tobacco Co.* v. *United States*, 147 F. 2d 93, 116 (C. A. 6), affirmed, 328 U. S. 781, on the ground that it involved only trial subpoenas (Br. 33), Professor Dession's statement of that case, quoted at page 28 of the petitioners' principal brief, is correct.[7]

In their principal brief (at pages 35-36), petitioners discussed the relevance of *United States* v. *Burr*, 25 Fed.

[7] Petitioners have been advised by Ralph D. Ray, one of the attorneys in the *American Tobacco Company* case, that the following procedure was adopted there:

> "It is quite true that the Government was permitted to inspect documents produced pursuant to subpoena without being restricted to documents which were to be offered in evidence. In fact, a large number of the documents which the Government attorneys inspected were not offered in evidence although, of course, some of them were.
>
> "The procedure followed was the issuance of a very broad subpoena which was returnable on the date tentatively set for trial. In response to this subpoena the Company produced approximately 250 files of documents which had been brought to the court house by truck. On that date a new trial date was assigned approximately one month later, but the court refused to order the return date of the subpoena changed. Instead, upon application by the Government, all of the documents produced in response to the subpoena were ordered impounded, and upon further application by the Government, the Government attorneys were given the right, during the month's interval before the new trial date, to inspect the papers so impounded.
>
> "The only limitation was that the court said that, with respect to any particular documents which the defendant might claim were irrelevant, privileged, or for any other reason should not be inspected, the court would, on application of the defendant, examine such documents in order to determine whether inspection should be permitted. There was no proviso limiting inspection to documents to be offered in evidence or requiring that the Government offer in evidence all documents inspected."

Cas. 14,692d, 14,694 (C. C. D. Va.) to Rule 17(c). Subsequent to the completion of their principal brief, petitioners observed that the original notes on Rule 17 refer to the Sixth Amendment and to 18 U. S. C. (1940 ed.) § 563, both of which are involved in the *Burr* case. Thus the preliminary and second preliminary notes to what is now Rule 17 stated that

> "The rule does not abridge or modify the rights of defendants under United States Constitution, Amendment VI; 18 U. S. C. § 563 * * *."[8]

Since these notes are also relevant to the final version of Rule 17(c) (see Petitioners' Br. 26, note 15), they are a further indication that Rule 17(c) was not meant to override the *Burr* case.

As shown in petitioners' principal brief (at pp. 36-37), any question as to the designation of the documents called for in the subpoena has been waived by the Government. Moreover, under decisions discussed in the petitioners' principal brief (at pp. 37-38, 65-66), the documents were adequately designated. In *United States* v. *Bondy*, 171 F. 2d 642, 644 (C. A. 2), the district court had approved a subpoena of comparable breadth to that involved here. The Government attacked the breadth of the subpoena in the court of appeals, but the district court's order was held "authorized by Rule 17(c)." The documents designated in the *Bondy* subpoena are set out in Appendix B hereto. Similarly, in *American Tobacco Co.* v. *United States*, 147 F. 2d 93, 116 (C. A. 6), affirmed, 328 U. S. 781, on which Rule 17(c) is patterned (see Petitioners' Br. 28), very broad pre-trial discovery subpoenas *duces tecum* were allowed (see note 7, *supra*). With one exception (discussed *supra*, p. 4), pre-trial inspection orders have apparently

[8] Federal Rules of Criminal Procedure, Preliminary Draft (1943), p. 106; Federal Rules of Criminal Procedure, Second Preliminary Draft (1944), p. 98.

never been reversed on the ground of scope. The breadth of inspection of course depends on the type of case. Where, as here, a complicated criminal proceeding involves thousands of documents, the *Bondy* and *American Tobacco* cases recognize that liberal inspection is appropriate (see also Petitioners' Br. 27). Cf. *Bethlehem Shipbuilding Corp. v. National Labor Relations Board*, 120 F. 2d 126, 127 (C. A. 1).

The Government's brief consistently complains of an alleged "dragnet" or "fishing expedition" designation here, and it is stated that petitioners are attempting to obtain a general disclosure of the Government's entire case by use of the subpoena *duces tecum* (Br. 32, 34, 35, 37). However, the subpoena *duces tecum* does not attempt to obtain a complete disclosure of the Government's case. In the first place, the subpoena is limited to documentary materials and objects. In addition, it excludes "memoranda prepared by Government counsel, and documents or papers solicited by or volunteered to Government counsel which consist of narrative statements of persons or memoranda of interviews" (R. 48). Thus, the district court excluded the "work product" of Government counsel, and also excluded narrative statements or memoranda of interviews prepared by others but solicited by or volunteered to Government counsel. These exclusions were directed by the district court because the Government had objected to the breadth of the petitioners' motion for a subpoena at the October 24, 1949 hearing. After the district court, in response to the Government's suggestion, narrowed the scope of the subpoena, the Government never again attacked the scope of the subpoena until its reply brief in the court of appeals. In fact, at the November 7, 1949 hearing in the district court, the Government expressed itself as satisfied with the form of the subpoena (R. 61, 62) as restricted by the district court at the October 24, 1949 hearing.

The Government has never disclosed how many documents are covered by this subpoena. Although they may be voluminous, it is also possible that there may be very few documents of the type designated in the subpoena. Thus, in the companion Robinson-Patman criminal cases pending against some of the petitioners herein,[9] the Government complied with subpoenas *duces tecum* under Rule 17(c) and produced a mere handful of documents thereunder. But because the Government's brief consistently complains of an alleged "dragnet" or "fishing expedition", it seems appropriate to refer also to cases decided under Rule 45(b) of the Federal Rules of Civil Procedure. Decisions under that Rule are pertinent, for the final note to Rule 17(c) states that it is "substantially the same as Rule 45(b) of the Federal Rules of Civil Procedure." Decisions under Rule 45(b) upholding broad subpoenas include *Wagner Mfg. Co.* v. *Cutler-Hammer*, 10 F. R. D. 480, 483-484 (S. D. Ohio); *403-411 E. 65th Street Corp.* v. *Ford Motor Corp.*, 27 F. Supp. 37, 38 (S. D. N. Y.); *Camuso* v. *City of Niagara Falls*, 9 Fed. Rules Serv. 30b.34, Case 1 (W. D. N. Y.); *Savannah Theatre Co.* v. *Lukas & Jenkins*, 8 Fed. Rules Serv. 45b.31, Case 1 (N. D. Ga.); *In the Matter of Chopnick*, 6 Fed. Rules Serv. 45b.413, Case 1 (S. D. N. Y.); cf. *Hercules Powder Co.* v. *Rohm & Haas Co.*, 3 F. R. D. 302 (D. Del). In those cases, the courts noted that the breadth of a subpoena *duces tecum* depends on the facts of the case, and that the nature of the case often requires approval of a liberal designation. Cf. *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 210, note 46; *United States* v. *United Shoe Machinery Corp.*, 76 F. Supp. 315, 316-317 (D. Mass.); *United States* v. *United States Alkali Export Ass'n*, 7 F. R. D. 256, 259 (S. D. N. Y.); *United States* v. *North Coast Transportation Company*, 8 F. R. D. 62, 63

[9] *United States* v. *Bowman Dairy Company, et al.*, No. 48 CR 361 (N. D. Ill.); *United States* v. *The Borden Company, et al.*, No. 48 CR 362 (N. D. Ill.).

(W. D. Wash). In the instant case, literally millions of transactions over a period of more than seven years are involved, so that such considerations are particularly cogent.

The Government asserts that pre-trial discovery is not an appropriate way to ascertain with greater particularity the nature of charges against defendants (Br. 37, note 22). However, courts regularly deny motions for bills of particulars or for more definite statement on the ground that discovery procedures make such motions unnecessary. Since the district court denied the petitioners' motion for a bill of particulars (except in two minor respects) in the very order in which it denied the Government's motion to quash this subpoena *duces tecum* (R. 75), it seems likely that the court was merely following the modern pattern of denying particulars which could be ascertained through discovery mechanisms, especially because the Government had urged the district court to deny petitioners' motions for a bill of particulars in view of the available discovery provisions.

The Government's brief assumes that the subpoenas *duces tecum* involved in the *Burr* case were limited to one letter from General Wilkinson to President Jefferson (Br. 39-40, note 27; see also Br. 20, note 9; 23, note 14; 36). However, the subpoena *duces tecum* served on President Jefferson covered General Wilkinson's October 21, 1806 letter to the President, together with the accompanying documents, the answer thereto and all military and naval orders concerning Aaron Burr. See *United States* v. *Burr*, 25 Fed. Cas. No. 14,692d (C. C. D. Va.) at pp. 31, 36, 37, 38; *United States* v. *Burr*, 25 Fed. Cas. No. 14,693 (C. C. D. Va.) at pp. 65, 68, 69-70. A subpoena *duces tecum* was also awarded in the *Burr* case directing Prosecutor Hay to produce General Wilkinson's letter of November 12, 1806, to President Jefferson. *United States* v. *Burr*, 25 Fed. Cas.

No. 14,694 (C. C. D. Va.) at pp. 189-190. After the Government's objections were rejected by the court, all documents designated in those subpoenas *duces tecum* were produced.[10] In two of his opinions in the *Burr* case (25 Fed. Cas. at pp. 32-38, 190-192), Chief Justice Marshall overruled the contentions advanced here by the Government.

Conclusion.

For the foregoing reasons, and the reasons given in petitioners' principal brief, it is respectfully submitted that the judgment of the court below should be reversed.

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[10] See *United States* v. *Burr*, 25 Fed. Cas. No. 14,693 (C. C. D. Va.) at pp. 65, 68, 69-70, 74-75, 85, 87; *United States* v. *Burr*, 25 Fed. Cas. No. 14,694 (C. C. D. Va.), at pp. 189, 190, 192-193.

APPENDIX A.

Petitioners wish to make the following observations with reference to the Government's analysis of cases set forth in the Appendix of petitioners' principal brief:

(1) Cases listed in Group 2(a) (Government's Br. 42):

State v. Superior Court, 39 Ariz. 242 (1931), is the only case which reverses a trial court's granting of pre-trial inspection, the reversal being based *solely* on the ground that no "case" or "proceeding" was pending before the trial court.

All other cases in the group, in denying pre-trial inspection (*People* v. *Gatti*, 167 N. Y. Misc., 545 (1938)) or in refusing to hold that such denial constitutes reversible error, expressly recognize judicial discretion in the trial court to grant pre-trial inspection.

(2) Cases listed in Group 2(b) (Government's Br. 42):

In the first four cases, the reviewing court held that pre-trial inspection was so important that denial of inspection constituted reversible error.

(3) Cases listed in Group 3 (Government's Br. 43-44):

Trustees of Schools v. *American Surety Co.*, 307 Ill. App. 398 (1940), was included in petitioners' Appendix to indicate that the case of *People* v. *Gerold*, 265 Ill. 448 (1914), is still followed in Illinois.

Matter of Attorney General of United States, 160 N. Y. Misc. 533, 536-537 (1936), was included since the dictum quoted at page 11 of petitioners' Appendix indicates that pre-trial inspection by a defendant of Grand Jury minutes is within the trial court's inherent discretionary power.

Very few of the decisions cited in the Government's brief hold that a trial court has no power to permit an accused to inspect, before trial, materials in the prosecutor's control, and those few decisions are plainly unsupportable (see Petitioners' Br. 50-67).

APPENDIX B.

The books, papers, documents and objects in the Government's possession which the defendants were permitted to inspect, copy or photograph pursuant to their Rule 17(c) subpoena *duces tecum* in *United States* v. *Littell and Marks* (Case No. C 127-420, S. D. N. Y.), *United States* v. *Bondy*, 171 F. 2d 642 (C. A. 2), were as follows:

1. All books, financial statements, corporate records (including directors' minutes, stock certificate books and articles of incorporation), income tax statements, correspondence, assignments, patents, patent applications, agreements and contracts of the American Hyalsol Corporation (hereinafter referred to as Hyalsol) since the date of its incorporation.

2. Correspondence, reports, memoranda, contracts, assignments and corporate records prepared by any officer, director, agent or employee of Henkel & Cie. (hereinafter referred to as Henkel), Deutsche Hydrierwerke A. G. (hereinafter referred to as Hydrierwerke), Boehme Fettchemie G.m.b.H. and its predecessor company H. Th. Boehme A. G. (both hereinafter referred to as Boehme), and Unichem Chemikalien Handel A. G. (hereinafter referred to as Unichem), from January 1, 1932, to date which in any way relate, directly or indirectly, to:

i. Negotiations with E. I. duPont de Nemours & Co. (hereinafter referred to as duPont) and Proctor & Gamble Company;

ii. The execution of contracts or license agreements with duPont and Proctor & Gamble and all references to the fields covered by the contracts or agreements and the compliance with the terms thereof;

iii. The formation of Hyalsol, the issuance, owner-

ship, transfer and acquisition of its stock; the issuance, ownership, transfer, acquisition, cancellation, discharge and payment of its bonds, notes and other indebtedness, and contracts between Hyalsol and Unichem;

iv. The payment of United States taxes by Hyalsol;

v. The default by Hyalsol in the payment of its obligations to Unichem and Gottfried Weiss;

vi. The negotiations in December, 1939, at Zurich, Switzerland.

vii. Reports to the German Government concerning Hyalsol, its stock, bonds and notes;

viii. Reports to the Swiss Government concerning Hyalsol, its stocks, bonds and notes, and Unichem;

ix. Reports to the British, United States and French Governments concerning Hyalsol;

x. The deposit of Hyalsol stock in safe deposit boxes in the United States; and

xi. Nelson Littell and Lewis H. Marks.

3. Memoranda, reports, statements and correspondence prepared and testimony given by Willi Feldrappe during the period from January 1, 1935 to date, which concern, directly or indirectly:

i. The ownership, location and custody of Hyalsol stock, bonds and notes;

ii. The relationship between Hyalsol, Henkel, Hydrierwerke, Boehme, Unichem, Proctor & Gamble, duPont, Littell, Marks and Weiss;

iii. The conferences and negotiations which took place in Zurich, Switzerland, in December, 1939;

iv. The ownership, transfer and discharge of Hyalsol bonds and notes;

v. Conferences with and statements and reports to officials of the German and Swiss Governments with respect to Hyalsol and its affairs;

vi. Conferences with and statements made to the British, French and United States government officials with respect to Hyalsol and its affairs; and

vii. The two safe deposit boxes in the United States where at various times during the period January 1, 1932 to January 1, 1941 stock of Hyalsol was located;

viii. Nelson Littell and Dr. Lewis H. Marks.

4. Memoranda, reports, statements and correspondence prepared and testimony given during the period from January 1, 1932 to date by Walter Schrauth, Hans Ackerman, Fritz Boening, Heinrich G. Bertsch, Jost Henkel, Fritz Pfund, Walter Kling, Gottfried Weiss and Hans Hotz, which concern directly or indirectly:

i. The negotiations leading up to and execution of license agreements between Hydrierwerke, Boehme, Unichem, duPont and Proctor & Gamble;

ii. The formation of Hyalsol in 1932;

iii. The assignment to Hyalsol of the Proctor & Gamble and duPont license agreements and patents mentioned in said license agreement, the issuance by Hyalsol of its notes and bonds to Unichem and contracts between Hyalsol and Unichem;

iv. The ownership of Hyalsol stock and the location of the stock certificates;

v. The relationship between Hyalsol, Henkel, Hydrierwerke, Boehme, Unichem, Proctor & Gamble, duPont, Littell, Marks and Weiss;

vi. The conferences and negotiations which took place in Zurich, Switzerland in December, 1939;

vii. The ownership, transfer, and discharge of Hyalsol bonds and notes;

viii. Conferences with and statements and reports to officials of the German and Swiss Governments with respect to Hyalsol and its affairs;

ix. Conferences with and statements made to the British, French and United States government officials with respect to Hyalsol and its affairs;

x. The two safe deposit boxes in the United States where at various times during the period from January 1, 1932 to January 1, 1941, stock of Hyalsol was located;

xi. Nelson Littell and Dr. Lewis H. Mark.

5. Memoranda, reports, statements and correspondence prepared and testimony given during the period from January 1, 1938 to date by Alice Kampe and Otto Debruss which concern directly or indirectly:

i. Conferences and negotiations which took place in Zurich, Switzerland in December, 1939.

ii. The transfer and discharge of Hyalsol bonds and notes.

iii. The ownership of Hyalsol stock.

iv. Conferences with and statements to the British, French and United States Government officials with respect to Hyalsol and its affairs.

v. Nelson Littell and Dr. Lewis H. Marks.

6. Correspondence, reports, memoranda, contracts, assignments and corporate records prepared by any officer, director or employee of duPont and Proctor & Gamble from January 1, 1932 to date which in any way concern directly or indirectly:

i. Negotiations and execution of contracts or license agreements with Henkel, Hydrierwerke, Boehme and Unichem.

ii. The formation of Hyalsol, the ownership of its stock, bonds and notes and the assignment of the contracts and license agreements to Hyalsol.

iii. The Proctor & Gamble loan to Hyalsol in the amount of $300,000.

iv. Reports and statements to and conferences with United States Government officials concerning Hyalsol.

v. Nelson Littell and Dr. Lewis H. Marks.

vi. Conferences and negotiations with Hyalsol, Unichem, Henkel, Hydrierwerke and Boehme relating to the fields covered by the license agreements and the enforcement of the terms and provisions of said agreements.

7. All correspondence, statements, reports and memoranda by Nelson Littell which in any way concern, directly or indirectly, Hyalsol and its affairs.

8. All correspondence, statements, reports and memoranda by Dr. Lewis H. Marks which in any way concern directly or indirectly, Hyalsol and its affairs.

9. All statements, reports, correspondence and memoranda which in any way concern directly or indirectly, Hyalsol and its affairs, Lewis H. Marks and Nelson Littell prepared by officials and employees of the German Government and of the German Reichsbank or obtained from the files of said German Government and German Reichsbank.